SUPREME COURT OF APPEALS OF VIRGINIA.

STRATTON'S ADM'R *v.* NEW YORK LIFE INS. CO.

June 12, 1913.

[78 S. E. 636.]

1. Insurance (§ 367*)—Nonforfeiture and Loan Provisions—Construction—Effect.—A life policy provided that it could not be forfeited after three years from issue, and if any subsequent premium was unpaid the policy would be indorsed for paid-up insurance, payable at the death of the insurer, specified in the table, less any indebtedness on the policy, provided demand was made therefor, with surrender of the policy, within six months after default; that if any subsequent premium was not paid, and the policy was not surrendered according to the preceding provisions, the insurance, after payment of any indebtedness, would be extended, without request or demand, for the amount of its face during the time provided for extended insurance, and if the insured was living at the end of the term the policy should cease. Insured procured a loan on his policy, agreeing that if the note was not paid when due the policy should automatically cease to be a claim, and the company should retain all cash received as part compensation for the rights granted, except as might be provided by the nonforfeiture benefits, etc. At the time of insured's default in payment of the note, he made no request for paid-up insurance within the time specified, and after paying his indebtedness to the insurer there still remained of the reserve apportionable to the policy a sufficient amount to purchase extended insurance for a term beyond the time of insured's death. Held, that the loan provision should be construed in connection with the provisions of the policy, and that the insurer was not entitled to require payment of the indebtedness from other funds in order to prevent a forfeiture, but that the reserve should be applied to the payment of the loan and the purchase of extended insurance; and hence the policy was in force at the time of insured's death.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 935, 938; Dec. Dig. § 367.*]

2. Insurance (§ 146*)—Forfeiture Provisions—Construction.—A life policy containing nonforfeiture provisions, being the work of the insurer, will be construed most strictly against the insurer and in favor of the insured, in order to prevent a forfeiture.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 292, 294-298; Dec. Dig. § 146.*]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Corporation Court of City of Lynchburg.

Action by Alexander B. Stratton's administrator against the New York Life Insurance Company. Judgment for plaintiff for less than the relief demanded, and he brings error. Reversed, and judgment rendered for plaintiff for the full amount sued for.

Thos. J. Williams and *Wilson & Manson,* all of Lynchburg, for plaintiff in error.

Kirkpatrick & Howard, of Lynchburg, for defendant in error.

CALDWELL, J. This is an action upon notice under the statute, brought by the administrator of Alexander B. Stratton, Jr., deceased, against the New York Life Insurance Company to recover of the latter the amount of an insurance policy alleged to have been held by the plaintiff's intestate and in force at the time of his death.

It appears that the defendant company issued to plaintiff's intestate on April 26, 1898, a policy of insurance for the sum of $2,000, which policy contained what is called "a policy loan agreement;" that on October 30, 1905, the insured obtained from the company a loan of $100 upon his policy as collateral, executing therefor also a "policy loan agreement," which loan had not been repaid in cash at the date of the insured's death, caused by drowning, on the 13th of November, 1907; that when the premium on the policy for the year beginning April 26, 1907, became due, the insured made a contract with the insurance company in regard thereto, which is evidenced by a writing, signed by the insured, called a "blue note" (on account of the color of the paper on which written), which note was for the sum of $28, with interest, payable on or before August 26, 1907, and set forth that the note was accepted by the insurance company, together with $10.20 in cash, on the following express agreement: "That although no part of the premium due on the 26th day of April, 1907, under policy No. 862036 issued by said company on the life of A. B. Stratton, Jr., has been paid, the insurance thereunder shall be continued in force until midnight of the due date of said note; that if this note is paid on or before the date it becomes due, such payment, together with said cash, will then be accepted by said company as payment of said premium and all rights under said policy shall thereupon be the same as if said premium had been paid when due; that if this note is not paid on or before the date it becomes due, it shall thereupon automatically cease to be a claim against the maker, and said company shall retain said cash as part compensation for the rights and privileges hereby granted, and all rights under said policy

shall be the same as if said cash had not been paid nor this agreement made; that said company has duly given every notice required by its rules or the laws of any state in respect to said premium, and in further compensation for the rights and privileges hereby granted the maker hereof has agreed to waive, and does hereby waive, every other notice in respect to said premium or this note, it being well understood by said maker that said company would not have accepted this agreement if any notice of any kind were required as a condition to the full enforcement of all its terms."

When said note matured on August 26, 1907, the insured, Stratton, executed another "blue note" for $18, payable on or before October 26, 1907, reciting that the note was accepted by the company at the request of the maker, together with $20.20 in cash, on a certain express agreement, which is practically the same as contained in the "blue note" quoted from above. When the last-mentioned note became due on October 26, 1907, it was not paid, and a new note was sent to the insured for execution by him, but it was never executed or returned to the company, and upon the lapse of the policy by reason of the insured's failure to settle this note the company wrote, on the 29th of October, 1907, to the insured, requesting him to revive his policy, and to that end inclosed a note for $12, with the request that he execute and return the same along with $6.15 in cash, to be received by the company in settlement of the premium on his policy for the year beginning April 26, 1907, which note was not executed by the insured, nor was the $6.15 in cash paid.

Thus, it appears, was the situation existing between the insured and the insurer up to November 13, 1907, on which date the insurer died, and proofs of his death were duly furnished the company, as required by the terms of the policy. It is admitted, however, by the company that at the date of the lapse of the policy on October 26, 1907, after deducting the loan of $100 upon it, as aforesaid, and any other indebtedness upon the policy from the reserve due the insured thereon, there was a balance of $42.22 to the credit of the insured then in the hands of the company, which, according to its application, would either have purchased for the insured $105 of paid-up insurance, or would have served to secure for the insured an extension of the policy, at its face value of $2,000, for a period of one year and three months from April 25, 1907. Whether or not it was competent, under the circumstances, for the company to apply the said balance to the purchase of paid-up insurance, or said balance should have been applied in the purchase of extended insurance, are questions unsettled by the agreed statements of facts appearing in the record.

The insurance company, before any action was commenced on said policy, tendered to the insured's personal representative $105 in settlement of its liability under the policy, which was not accepted, and thereupon this action was brought.

When the cause was called for trial, a jury was waived by both parties, and all questions of law and fact were submitted to the court for decision upon the issue joined; whereupon the court, upon two statements of facts agreed to by the parties, entered its judgment for the plaintiff in the sum of $105, instead of the sum of $2,000, the face value of the policy claimed by the plaintiff, to which judgment the plaintiff applied for and obtained this writ of error.

The principal question presented is: To which of the two ways should the balance of $42.22, admittedly to the credit of the insured at the date of the lapse of his policy on October 26, 1907, after deducting the $100 loan upon the policy, have been applied—to the purchase of paid-up insurance, or to the purchase for the insured of an extension of his policy at its full face value of $2,000 for a period of one year and three months from the 25th of April, 1907? A decision of this question necessarily must turn upon the construction and interpretation of the contract between the insurer and the insured as evidenced by the policy and the "loan agreement."

The provisions of the policy which relate to the question are set out under the heading of "Benefits and Provisions," and are as follows:

"2.—Nonforfeiture.

"This Policy Cannot be Forfeited after It shall have been in Force Three Full Years as Hereinafter Provided.

"First.—If any subsequent premium is not duly paid, this policy will be indorsed for the amount of paid-up insurance payable at the death of the insured, specified in the table on the preceding page, less the value of any indebtedness on this policy, provided demand is made therefor with surrender of this policy within six months after such nonpayment; or,

"Second.—If any subsequent premium is not duly paid, and if this policy is not surrendered as provided in the preceding clause, the insurance under this policy will, after the repayment of any indebtedness, be extended without request or demand therefor, for the amount of two thousand dollars, during the term provided in the table on the preceding page, payable only if the insured dies within said term. At the end of said term, if the insured is then living, this policy shall cease and determine.

"Third.—The insurance provided for in the two preceding clauses shall be based upon completed insurance years only, and shall be subject to the conditions of this policy, but without fur-

ther payment of premiums and without loans or participation in surplus."

We need not advert to the "table" referred to in the foregoing provisions, set out in full on the second page of the policy, under the heading of "Special Advantages, Table of Loans and of Surrender Values in Paid-up Insurance, or Extended Insurance, etc.," further than to say that the terms provided therein do not militate against the view for which plaintiff in error contends, that under the provisions of the policy, upon default in the payment of any premium, the insurance was automatically extended, without any action whatever on the part of the insured, provided there was to his credit on the reserve fund an amount sufficient to pay the company any indebtedness due it from the insured, and to purchase for him extended insurance for at least one year from the due date of the premium on the policy as to the payment of which default was made, to wit, on April 26, 1907, unless the insured made demand for paid-up insurance, which demand was not in this case made.

Under the "Nonforfeiture" provisions of the policy, when it lapsed on October, 1907, for nonpayment of the premium for the year beginning April 26, 1907, and no demand had been made for paid-up insurance, as is conceded, did the policy become forfeited, and, if not, was not the insured entitled to the benefit of extended insurance in accordance with the terms of the second clause thereof?

[1] That the policy was not forfeited, but was extended as in full force for a period of one year and three months from April 26, 1907, during which period insured died, and the insurer became liable to the personal representative of the deceased for the amount of the face value of the policy, is also conceded, unless the right to this extended insurance was lost to the insured by the nonpayment in cash of the $100 loan he had obtained from the insurer, notwithstanding he had to his credit with the insurer a fund sufficient to repay the said loan and to purchase an extended insurance under his policy for a period extending beyond his death.

As it seems to us, there was no indebtedness due from the insured to the insurer when the policy lapsed on October 26, 1907, but, on the contrary, the company was, after deducting the indebtedness of the insured to it, due the insured a balance of $42.22, an amount sufficient to purchase an extended insurance for a period beyond his death, and he had not applied for paid-up insurance for the amount of this balance, and that by the very terms of the contract between the parties the insured had the right to rely, as doubtless he did, upon the provision contained in clause second of his policy that he should be entitled

to have the balance to his credit with the insurer applied to the purchase of extended insurance, unless he demanded paid-up insurance and surrendered his policy.

The position taken by the insurance company (defendant in error here) is that plaintiff in error's intestate owed it $100 of borrowed money, and while it owed the insured $142.22, instead of striking a balance and giving to the insured $42.22 worth of extended insurance, it had the right to and did demand that the $100 loan be first repaid to it, not out of the $142.22 to the credit of the insured, but from other sources, before it was called upon to give to the insured $42.22 worth of extended insurance. In other words, defendant in error denies that the insured had the right to set off against his loan of $100 the $142.22 to his credit with defendant in error, and contends that because the $100 loan had not been paid from other sources no part of the $142.22 to the credit of the insured, though applicable to the repayment of the loan, should have been applied to the purchase of extended insurance under the policy.

This contention is not borne out by the language of the contract between the parties. Under the heading "General Regulations" in the contract is this clause: "Any indebtedness to the company, including any balance of the current year's premium remaining unpaid, will be deducted in any settlement of this policy or of any benefit thereunder." The defendant in error might have had the right to declare the policy in question forfeited by the nonpayment of the premium thereon for the year beginning April 26, 1907; but this it did not do, but instead treated the policy as in force, and sought to have the unpaid premium paid until after the death of the insured, and for weeks after it occurred, certainly up to the time it heard of the insured's death. It is not pretended that the policy was forfeited by reason of the nonpayment of a premium matured thereon, but because of the nonpayment of borrowed money under the "loan agreement," which is, in effect, to claim that the phrase "after the repayment of any indebtedness," contained in the policy, absolutely forfeited the right to extended insurance immediately upon the insured's contracting a debt with his insurer; and this, too, regardless of how small the debt or how large a sum there might be to the credit of the insured, by way of reserve upon his policy, in excess of the contracted debt. Had there been no debt for a loan contracted pursuant to the provisions of the policy in this instance, it would hardly be claimed that defendant in error would have had the right to declare the policy forfeited, as it did on December 24, 1907, over a month after the death of the insured, when it had in its hands on October 26, 1907, money enough to purchase for the insured extended in-

surance for a period extending beyond his death, so that the forfeiture of the policy, as remarked, is not based upon the failure to pay a premium due thereon, but upon the nonpayment, from other sources than the reserve fund to the credit of the insured, of a debt for money borrowed.

Forfeitures are not favored in law, and when they are mere penalties for the nonpayment of borrowed money they are not allowed.

In N. Y. Life Ins. Co. *v.* Curry, 115 Ky. 100, 72 S. W. 736, 61 L. R. A. 268, 103 Am. St. Rep. 297, it is said: "The courts have uniformly held in favor of the insurer that agreements for the forfeiture of the policy, when premiums were not paid when due, are valid, and their enforcement is upheld. This is said to be because 'on the prompt payment of the premiums depends the mutuality of the contract and the ability of the insurance company to meet its obligations.' But both the reason and the rule are restricted to the matter of premiums alone. Forfeitures are disfavored in law. When they are mere penalties for the nonpayment of borrowed money, they are not allowed. They lead to, and themselves are, unconscionable oppressions of the unfortunate."

As said by this court in Knights of Columbus *v.* Burroughs, 107 Va. 688, 60 S. E. 46, 17 L. R. A. (N. S.) 246, "courts are astute * * * to discover modes of escape from declaring a forfeiture."

The case of N. Y. L. Ins. Co. *v.* Curry, supra, is also authority for the proposition that when an insurance company loans money to one of its policy holders it is in no different position from any other lender of money; and in lending its money it is subject to the same general rules and principles governing banks, trust companies, and other such corporations engaged in lending money. This general rule is that a borrower, say from a bank, when his loan falls due, has the right to offset against the loan any amount to his credit with the bank, a privilege which works equally in favor of the bank, and it is difficult to perceive a reason why an insurance company lending money to its policy holders should not be subject to the same rule, especially so in the absence of a different rule stipulated for and clearly expressed in the contract between the parties. The "table" made a part of the policy here in question was not, as appears to us, put there to restrict the rights of the insured, but to give expression to the agreement that at the end of three years from the date of the policy there was a certain reserve value to the credit of the holder of the policy, which reserve increased each year that the policy continued in force, and that upon the lapse of the policy for the nonpayment of a premuim maturing thereon, the insured,

under the heading "Special Advantages," showing what this reserve value would purchase at the end of any year, had the right, by refraining from demanding paid-up insurance therefor and surrendering his policy, to rely upon the provision made for him in his contract that this reserve fund, after deducting therefrom "any indebtedness to the company, including any balance of the current year's premium remaining unpaid," would be applied to the purchase for him of extended insurance.

"The 'table' could not prescribe the amount of continued or paid-up insurance in case of indebtedness of any kind, because the extent of the continued or paid-up insurance would be dependent upon the amount of the indebtedness to be first deducted before the continued or paid-up insurance was computed. The 'table' is inserted in the policy to show the rights of or benefits to the insured in continued or paid-up insurance in case of default at specified times in paying the premium to become due on the policy. * * *

"The time that the insurance would be extended, or the amount of the paid-up insurance, was definitely fixed and determined in the policy in all cases where it was possible to so fix and determine the time or the amount in advance. In all cases of indebtedness the continued or paid-up insurance was dependent upon the amount of indebtedness. The fact of an indebtedness to the defendant did not forfeit the right to continued or paid-up insurance, but simply left the time of the extension or the amount of the paid-up insurance dependent upon a computation to be made when the amount of the indebtedness was determined."

Taylor *v.* N. Y. Life Ins. Co., 197 N. Y. 324, 90 N. E. 964.

We are unable to appreciate the force of the argument on behalf of the defendant in error that the "loan agreement" changed the contractual relations between the insured and insurer. This agreement does provide that if default should be made in the payment of any premium on the policy, or any interest on the loan on the date when due, the defendant in error, without demand or notice of any kind, might deduct the amount due on the loan from the reserve on the policy computed as stipulated for in the agreement, and the balance of the reserve fund so computed would be taken as a single premium of life insurance at the published rates of the company, and shall be applied to the purchase of paid-up or extended insurance upon the life of the insured under said policy, at the age of said insured on said due date, payable under the same conditions as the original policy, without premium return, participation in profits, or further payment of premiums; but the purpose of this "loan agreement" was doubtless intended as providing a method of collecting and

securing to defendant in error, the insurer, the loan of $100, which method was by foreclosure of the policy, and upon foreclosure the only privilege remaining in the insured was the right to paid-up insurance for an amount to be computed by the insurer after the indebtedness had been deducted from the reserve value of the policy. We cannot construe this "loan agreement" as a waiver on the part of the insured, either expressly or impliedly, of any of his "nonforfeiture" privileges under the policy, but these privileges, as it seems to us, remained intact to the insured, subject, however, to the right of the insurer to cancel and foreclose the policy whenever it chose so to do after default in the payment of any premium past due and owing on the policy, or in the payment of interest due on the loan made thereon; but, again, it is to be observed that defendant in error did not avail itself of this right, and did not attempt a foreclosure of the policy until after it had incurred a loss thereon by reason of the death of the insured weeks before any action towards a foreclosure of the policy was taken, and after it had treated the policy as in full force, and had endeavored to collect the "blue note" taken for unpaid premiums, or to get from the insured renewals of this note. The foreclosure of the policy was neither automatically effected on October 26, 1907, upon the failure of the insured to pay the "blue note" due on that date, nor was it effected on that date, or after, and before the death of the insured, by any affirmative action on the part of the defendant in error. To effect a foreclosure of the policy, some affirmative act was required on the part of the defendant in error. Brady *v.* Prudential Ins. Co. of Amer., 9 Misc. Rep. 6, 29 N. Y. Supp. 44; 3 Cooley's Briefs on Ins. 2261, 2278; O'Brien *v.* Prudential Ins. Co. of Amer., 12 Misc. Rep. 127, 33 N. Y. Supp. 67.

As we have seen, defendant in error took no action towards effecting a foreclosure of the policy here in question until weeks after the death of the insured. On the contrary, instead of availing itself of its right to foreclose immediately on default in the payment of the "blue note" falling due on October 26, 1907, defendant in error delayed the foreclosure of the policy until December 24, 1907, and in the meantime conducted a correspondence addressed to the insured, endeavoring to have him reinstate his policy, all of its letters admitting that the "nonforfeiture" benefits of the policy were in force pending foreclosure by the company, and one of these letters, dated October 29, 1907, inclosed to the insured, to be signed by him, a "blue note" for the amount of the balance of unpaid premiums, upon the face of which note appears the following: "This note is deposited with the New York Life Insurance Company pend-

ing the consideration by said company at its home office of an application for the restoration of policy No. 862036 on the life of Alex'r B. Stratton, Jr., which policy by the nonpayment of premium due April 26, 1907, is not now in force, *except as may be provided by the nonforfeiture benefits contained therein.*" (Italics ours.)

We again advert to the provision of the policy that provides that, in order to entitle the insured to paid-up insurance, he must have made demand therefor, and there is no pretense that such demand was ever made; and, further, that the "nonforfeiture" provisions of the policy stipulated that in these circumstances the only benefit remaining to the insured was the right to extended insurance.

The case of Eagle *v.* N. Y. Life Ins. Co., 48 Ind. App. 284, 91 N. E. 814, relied on as authority in this case, does not sustain the position taken by defendant in error. In that case the insurance company foreclosed the loan made on the policy, and the question decided was whether the provision in the loan agreement providing for foreclosure without notice was illegal; and the court merely held that such provision was legal, and that the foreclosure in that case had been properly made. No such question is involved in the case at bar.

[2] It is said in the opinion of this court by Burks, J., in Georgia Home Ins. Co. *v.* Kinnier's Adm'r, 28 Gratt. (69 Va.) 105, and afterwards cited in later cases: "The maxim that 'the words of an instrument shall be taken most strongly against the party employing them' is peculiarly appropriate in the construction of a policy of insurance, and especially of such conditions as we are now considering. The instrument is wholly the work of the underwriter, and is usually filled with a multitude and variety of stipulations seldom read by the assured when he accepts the policy, and, if read, rarely, if ever, understood. Abounding in forfeitures and in provisions, generally harsh and difficult of performance, it should be strictly construed against the insurer and liberally in favor of the insured. A modern writer on insurance thus states the rule: 'No rule, in the interpretation of a policy, is more fully established, or more controlling and imperative, than that which declares that in all cases it must be liberally construed in favor of the insured, so as not to defeat without a plain necessity his claim to indemnity, which, in making the insurance, it was his object to secure.' May on Insurance, 182."

In the light of this universally recognized rule of construction, and in view of the agreed facts made a part of the record in this case, until the policy in question was foreclosed, the ownership of it and the assured's rights under it were not af-

fected; one of these rights being that of having his indebtedness to the insurer paid out of the amount to his credit from the reserve fund stipulated for in the policy, and the balance of this reserve applied to the purchase of extended insurance, and that, too, without any request or demand on his part. There being enough money to the credit of the insured with the company to pay it the loan he had obtained on his policy and to continue the policy as extended insurance for one year and three months from the time of default in the payment of the premium which matured April 26, 1907, during which period, and before the defendant in error attempted to exercise its right to foreclose the policy, the insured died, the agreement of defendant in error to pay $2,000 to the deceased's personal representative became absolute and final.

For the foregoing reasons, we are of opinion that the judgment of the trial court is erroneous, and it will therefore be reversed and annulled, and this court will enter here judgment for $2,000 in favor of plaintiff in error against defendant in error for the face value of the policy sued on, with interest thereon from the 13th day of November, 1908, till paid, and costs.

Reversed.

KEITH, P., absent.

Note.

As said by Judge Burks in Georgia Home Ins. Co. *v.* Kinnier's Adm'r, 28 Gratt. (69 Va.) 105, "the maxim that the words of an instrument shall be taken most strongly against the party employing them, is peculiarly appropriate in the construction of a policy of insurance. The instrument is wholly the work of the underwriter, and is usually filled with a multitude and variety of stipulations seldom read by the assured when he accepts the policy, and if read, rarely if ever understood. Abounding in forfeitures and in provisions, generally harsh and difficult of performance, it should be strictly construed against the insurer and liberally in favor of the insured." It would doubtless be amazing could we ascertain the proportion of successful and shrewd business men who enter into contracts of insurance involving large sums and who never carefully read their contract but rely entirely upon the statements of the agent as to what it contained. In no other form of business contract is there such apparent carelessness displayed as in contracts of insurance.

"The courts sometimes are disposed to show impatience with the carelessness with which the insured inconsiderately enter into contracts so important, and to hold them to the strict letter. Again, they may show some impatience with the multitude of conditions, exceptions, limitations, and restrictions which they generally contain, and are disposed to construe them quite liberally in favor of the insured, as contracts framed by the insurer too much for his own benefit, and accepted by the insured without examination, and with no comprehension of their full import. But in all cases the aim

should be, and for the most part is, to construe them fairly, according to the rules and principles applicable to such instruments; that is, to look at the main object the forfeiture prescribed for is intended to accomplish—go by the reasonable meaning, rather than by the literal form, so as to give it such effect as, according to its purpose and terms, in equity and good conscience it ought to have. The conditions of forfeiture are not to be disregarded." Girling *v.* Agricultural Ins. Co., 39 W. Va. 689, 20 S. E. 691.

"The plaintiff was induced to take out the original policy by representations and assurances that all endowment policies issued by the company were nonforfeiting, and that after two or more premiums had been paid, if he should desire to discontinue further payments, a paid-up policy would be issued on surrender of the original policy, for a proportionate amount of the original policy, according to the number of premiums paid. A policy issued under such circumstances should be interpreted as the assured understood it and the company intended he should understand it, if all parts of the contract, taken together, admit of such a construction. The company represented that the paid-up policy would be nonforfeiting, and the assured so understood it. It contains a provision for the payment of any indebtedness to the company by deducting it from the amount of insurance secured by the policy, and the failure to pay the interest in advance upon the notes given on the original policy is to be treated as an indebtedness to the company and not as a forfeiture of the paid-up policy: Cowles *v.* Continental Life Ins. Co., 63 N. H. 300; Montgomery *v.* Phœnix Mut. Life Ins. Co., 14 Bush 59; Cole *v.* Knickerbocker Ins. Co., 63 How. Pr. 445; Northwestern, etc., Life Ins. Co. *v.* Little, 56 Ind. 504; Ohde *v.* Northwestern, etc., Ins. Co., 40 Iowa 357; Symonds *v.* Northwestern, etc., Ins. Co., 23 Minn. 491; Hull *v.* Northwestern, etc., Ins. Co., 39 Wis. 397; Franklin L. Ins. Co. *v.* Wallace, 93 Ind. 17; Northwestern, etc., Ins. Co. *v.* Fort's Adm'r, 82 Ky. 269; St. Louis M. L. Ins. Co. *v.* Grigsby, 10 Bush 310." Eddy *v.* Phœnix Mut. Life Ins. Co., 65 N. H. 27, 23 Am. St. Rep. 17, 18.

The guaranty fund provided for in a renewable term policy of life insurance without re-examination must be construed the same as a reserve fund in an ordinary life insurance policy, within the meaning of the New York statute. The spirit of the statute requires a broad meaning to be given to it for the benefit of the insured. When a policy of life insurance stipulates that the reserve shall be applied as shall have been agreed in the application, either to continue the insurance or purchase a paid-up policy, and neither the application nor the policy contains any agreement with reference to the application of the reserve, the assured must, nevertheless, be given the benefit of the reserve, or surplus, by having it applied upon an extension or a reinsurance, instead of having it returned to him, and on his death, without any application or agreement on his part, the right to recover the insurance cannot be successfully resisted on the ground that he did not exercise his option of having the reserve applied for the purpose of keeping the policy in force. Nielsen *v.* Provident Sav. Life Assur. Soc., 139 Cal. 332, 73 Pac. 168, 96 Am. St. Rep. 146.

It was held in Kline *v.* National Ben. Asso., 9 West. Rep. 289, 111 Ind. 462, that even though it is stipulated in a note given in payment of a premium, that failure to pay same when due would forfeit the policy, such failure to pay did not work a forfeiture of the policy.

An insured in a life policy which contained a "table of loans and surrender values in paid-up insurance or extended insurance" avail-

able at the end of the third year of the policy, and which stipulated that the policy should not be forfeited after being in force three full years, and that, if any subsequent premium was not paid, the policy would be indorsed for the amount of paid-up insurance specified in the table on the surrender of the policy within six months after such nonpayment, or, if the policy was not surrendered, the insurance, without request, would be extended for the face of the policy during the term provided in the table of loans and surrender values—executed for the fourth annual premium his note, reciting that, unless the interest thereon and subsequent premiums should be paid, the policy should be forfeited "except as to the right to a surrender value or paid-up policy." The insured failed to pay the interest and subsequent premiums, and died within the period fixed in the table for extended insurance. Held, that the stipulation in the note for the forfeiture of the policy did not destroy the right of the insured to the extended insurance, it being one of the "surrender values" provided for in the "table of loans and surrender values." Drury *v.* New York L. Ins. Co., 115 Ky. 681, 74 S. W. 663.

Nonpayment of Interest on Premiums.—Where part of a premium is loaned to the insured upon his note at one year, the interest being paid in advance, and the policy expressly provides that, if the insured fail to pay annually in advance the interest on any unpaid note or loans, the policy shall cease and determine, the interest becomes practically a premium payable annually in advance; and the policy lapses as in other cases if the premiums be not promptly paid. But the company would be bound to apply the dividend to which the policy holder might be then entitled in such a manner as to save the forfeiture—that is, first to the payment of the interest. Smith *v.* St. Louis Mutual Life Ins. Co., 2 Cooper's Chy. 727.

Paid-Up Policy—Within What Time May Be Demanded.—If a life insurance policy provides that if a cause of forfeiture accrues after the policy has been in force for three years, the insurer will, on the surrender of the policy within six months after the lapse issue a nonparticipating paid-up policy for such sum as the legal net reserve at the time of the lapse will purchase as a single premium, the time specified within which the surrender may be made is not of the essence of the contract, and the insured is entitled to a paid-up policy, though he does not demand it for nearly five years. Manhattan Life Ins. Co. *v.* Patterson, 109 Ky. 624, 60 S. W. 383, 95 Am. St. Rep. 393; Mutual Life Ins. Co. *v.* Jarboe, 102 Ky. 80, 80 Am. St. Rep. 343, 42 S. W. 1097. See, also, Southern Mut. Life Ins. *v.* Montague, 84 Ky. 653, 4 Am. St. Rep. 218, 2 S. W. 443; Wilcox *v.* Equitable Life Assur. Soc., 173 N. Y. 50, 93 Am. St. Rep. 579, 65 N. E. 857. And compare Cravens *v.* New York Life Ins. Co., 148 Mo. 583, 71 Am. St. Rep. 628, 50 S. W. 519; Universal Life Ins. Co. *v.* Whitehead, 58 Miss. 226, 38 Am. Rep. 322; Manhattan Life Ins. Co. *v.* Patterson, 109 Ky. 624, 60 S. W. 383, 95 Am. St. Rep. 393, 400.

Rights of Beneficiary as Effected by Acts of Insured.—That the beneficiary has a vested right in an insurance policy seems to be upheld by the weight of authority, and such right cannot be impaired by the acts of the insured.

"As this policy was made payable to the husband at maturity, if then alive, and to his wife at his death, if he died before its maturity, it was to the interest of both to keep the policy in force by the payment of the annual premiums, either in cash or by premium note. Payment might be made in cash or by note, as the parties should determine. As to his interest in the policy, he could give a premium note with a forfeiture clause broader and more onerous

than the forfeiture clause in the policy; but, as she had a vested interest in the policy in case she survived him, he could not affect her rights by giving such a premium note without her consent. While the forfeiture clause in the premium note which became due May 1, 1895, was binding upon him, it was not binding as to her, because she had no knowledge of the same, and did not assent thereto. When he found himself unable to pay the premium in cash, it was his interest and duty, as well to himself as to his wife, to keep the policy in force by giving a premium note; and, as to himself, he could insert such terms of forfeiture in the note as he saw fit, but, as to her interest, he could not change the contract of insurance without her consent. He might put an end to the policy, by failing to pay the premium in cash or note, or by failing to pay the note at its maturity; but, so long as he kept the policy alive, the interest therein of the wife remained unchanged, unless she consented to a change. She had the right to stand upon the terms and conditions of the policy, unchanged and unaffected by any forfeiture clause in a premium note." Union Central Life Ins. Co. *v.* Buxer, 62 O. St. 385, 49 L. R. A. 737, 743. See also, Waldrom *v.* Waldrom, 76 Ala. 285; Brockhaus *v.* Kemna, 10 Biss. 338, 7 Fed. Rep. 609; Timayenis *v.* Union Mut. L. Ins. Co., 22 Blatchf. 405, 21 Fed. Rep. 223; Chapin *v.* Fellowes, 36 Conn. 132, 4 Am. Rep. 49; Lemon *v.* Phœnix Mut. L. Ins. Co., 38 Conn. 294; Hubbard *v.* Stapp, 32 Ill. App. 541; Pence *v.* Makepeace, 65 Ind. 345; Harley *v.* Heist, 86 Ind. 196, 45 Am. Rep. 285; Wilmaser *v.* Continental L. Ins. Co., 66 Iowa 417, 55 Am. Rep. 277, 23 N. W. 903; Pilcher *v.* New York L. Ins. Co., 33 La. Ann. 322; Putnam *v.* New York L. Ins. Co., 42 La. Ann. 739, 7 So. 602; National L. Ins. Co. *v.* Haley, 78 Me. 268, 57 Am. Rep. 807, 4 Atl. 415; Gould *v.* Emerson, 99 Mass. 154, 96 Am. Dec. 720; Unity Mut. Life Assur. Asso. *v.* Dugan, 118 Mass. 219; National L. Ins. Co. *v.* Pingrey, 141 Mass. 411, 6 N. E. 93; Ricker *v.* Charter Oak L. Ins. Co., 27 Minn. 193, 38 Am. Rep. 289, 6 N. W. 771; Allis *v.* Ware, 28 Minn. 166, 9 N. W. 666; Packard *v.* Connecticut Mut. L. Ins. Co., 9 Mo. App. 469; Stokell *v.* Kimball, 59 N. H. 13; City Sav. Bank *v.* Whittle, 63 N. H. 587, 3 Atl. 645; Stilwell *v.* Mutual L. Ins. Co., 72 N. Y. 388; Whitehead *v.* New York L. Ins. Co., 102 N. Y. 143, 55 Am. Rep. 787, 6 N. E. 267; Ferdon *v.* Canfield, 104 N. Y. 143, 10 N. E. 146; Garner *v.* Germania L. Ins. Co., 110 N. Y. 266, 1 L. R. A. 256, 18 N. E. 130, reversing 17 Abb. N. C. 7; Foley *v.* Mutual L. Ins. Co., 138 N. Y. 333, 20 L. R. A. 620, 34 N. E. 211; Butler *v.* State Mut. L. Assur. Co., 55 Hun 296, 8 N. Y. Supp. 411; Re Booth, 11 Abb. N. C. 145; People *v.* Globe Mut. L. Ins. Co., 15 Abb. N. C. 75, reversing 65 How. Pr. 239; Carpenter *v.* Negus, 17 Misc. 172, 40 N. Y. Supp. 995; Ruppert *v.* Union Mut. Ins. Co., 7 Robt. 155; Fraternal Mut. L. Ins. Co. *v.* Applegate, 7 Ohio St. 292; Manhattan L. Ins. Co. *v.* Smith, 44 Ohio St. 156, 58 Am. Rep. 806, 5 N. E. 417; Ex parte Dever, L. R. 18 Q. B. Div. 600; Jones *v.* Jones, 23 Pa. Co. Ct. 254; Waltz *v.* Mutual Aid Soc., 5 Pa. Co. Ct. 208; Connecticut Mut. L. Ins. Co. *v.* Baldwin, 15 R. I. 106, 23 Atl. 105; Gosling *v.* Caldwell, 1 Lea, 454, 27 Am. Rep. 774; Southern L. Ins. Co. *v.* Booker, 9 Heisk. 606, 24 Am. Rep. 344; Irwin *v.* Travelers' Ins. Co., 16 Tex. Civ. App. 683, 39 S. W. 1097; Valley Mut. L. Ins. Co. *v.* Burke (Va.), 12 Ins. L. J. 337; Fortescue *v.* Barnett, 3 Myl. & K. 36, 2 L. J. Ch. N. S. 98; Bunnell *v.* Shilling, 28 Ont. Rep. 336.

There are, however, cases holding the contrary doctrine. See Whitehead *v.* N. Y. Life Ins. Co., 102 N. Y. 143, 6 N. E. 267; Mutual Life Ins. Co. *v.* Hill, 178 U. S. 347; Breitung's Estate, 78 Wis. 33, 46 N. W. 891.